IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 1738 of 1995
Date of decision July 16, 2010

National Insurance Co. Ltd.

..... Petitioner

Versus

Smt. Saroj and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

*****

Present:- Mr. Mahataj Bakhsh Singh, Advocate
for the appellant.

K. Kannan, J (oral)

1. The Insurance Company is in appeal against the judgment of the MACT contending that in spite of the fact that the driver who drove the vehicle was proved to have had a fake driving licence, the liability is wrongly cast on it.

2. The liability of the Insurance Co in a case of a fake licence or a renewal of a licence which was a fake one have been considered by the Hon'ble Supreme Court in several cases and the decisions in ***National Insurance Co v Swaran Singh (2004) 3 SCC 297*** and ***United Indian Insurance v Divinder Singh (2007) 8 SCC 342*** are instructive. In the latter judgment, it has been held that a renewal of a fake driving licence is no licence at all and hence the insurer shall not be liable.

3. It was even held earlier by the Hon'ble Supreme Court, while referring to the effect of a renewal of forged licence, in ***New India Assurance Co., Shimla v. Kamla,(2001) 4 SCC 342*****:**

4. The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. v. Sucha

Singh that renewal of a document which purports to be a driving licence, will robe even a forged document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

5. The judgment of the Supreme Court in *Swaran Singh (supra)* has an immediate relevance for us in this case for the effect of proof of fake licence in the context of the need for discharging the burden of proof on the Insurance company that the insured had committed a breach of terms of the policy. The fact that the driver had a fake licence will absolve the insurer of the liability of the insurer only, if it is established that the accident was on account of reasons where the possession of valid driving licence will have relevance for consideration of the aspect of negligence that has to be proved. If the accident was on account of say, mechanical defect in the vehicle, the issue of the validity of licence will have no relevance.

6. In this case, the driver has not examined himself and there is no evidence about the licence except the copy of the driving licence, which is produced and whose genuineness has been the subject of evidence through an officer of the licensing authority with reference to the official document. The owner has remained ex parte and no evidence is available about his bonafides of enquiry regarding the possession of driving licence by the driver before its entrustment to him. Consequently, the insured shall not have the benefit of indemnity under the policy.

7. Even if the insurance company is not liable, the

duty to satisfy the award for the claimants cannot be doubted**.** In such a situation, the liability to satisfy the award will be accompanied with a right of recovery from the owner/insured. This cannot be doubted in anyway, as specifically provided by the decision of the Supreme Court while dealing with the effect of proviso to section 149(4) and section 149(5) of the M.V.Act in ***New India Assurance co v Kamla*** **(2001*) 4 SCC 342:***

> ***19.*** *Sub-section (4) of Section 149 of the Act says that so much of the policy as purports to restrict the insurance of the person insured by reference to any condition shall "as respects such liabilities as are required to be covered by a policy ..., be of no effect". The proviso to the said sub-section is important for the purpose of considering the question involved in this case and hence that proviso is extracted below:*
> *"Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person."*
> ***20.*** *Similarly, in this context sub-section (5) is equally important and hence that is also extracted below:*
> *"149. (5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person."*
> ***21.*** *A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.*
> ***22.*** *To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.*
> ***25.*** *The position can be summed up thus:*
> *The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the*

amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition.

These observations were subsequently cited with approval in *Swaran Singh's case (supra)* also.

104. *It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first*  *instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.*

105. *Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.*

.....

110. *The summary of our findings to the various issues as raised in these petitions is as follows:*

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care

to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

……...

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

8. Under the circumstances, the Insurance Company shall not be liable to indemnify the insured. The liability is to satisfy the claim under the award with a right of recovery against the insured. The award of the Tribunal is modified and the appeal allowed to the above extent.

(K. KANNAN)
JUDGE

July 16, 2010
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